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A N [Berisford, John] c
ARGUMENT,

S H E W I N G

That 'tis Impossible for the N A T I O N
to be Rid of the G R I E V A N C E S
Occasion'd by the Marshal of the
K I N G ' S - B E N C H, and Warden of
the F L E E T, without an Utter Ex-
tirpation of their present Offices.

W I T H

P R O P O S A L S

F O R A

New Constitution
Of those Offices.

By way of Letter to a Member of Parliament.

*Cuncta prius tentanda; sed immedicabile vulnus,
Euse recidendum est, ne pars sincera trahatur.*

Ovid Met. Lib. 1.

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AT KINGSTON

KINGSTON ONTARIO CANADA

T O

Sir William Duncombe, Bar.

S I R,

THO' I have not the Honour of an Acquaintance with you, yet since I found your Name in the Printed Votes, as a Petitioner for Redress, against the Warden of the Fleet, and that you were so great an Instance, of the Oppression which the Gentry of England, as well as the Tradesmen, and Commonalty, labour under ; I presum'd to Affix your Name to these Papers, which I'm sure are wrote with no other Design, than to Advance the Publick Advantage, by endeavouring to Suppress a Nest of Pestilent Vipers, who have Stung, and been equally Pernicious, to all Ranks and Degrees of Men, except only those who have nothing to lose. The Riches of England consists in Land and Trade, which are the Pillars of the Government, and must be Maintained and Supported, but both are Weakened, and Terribly Shaken, by the Defect in Execution of the Legal Process ; Lands have lost their

Ancient Value, and do not Answer the Profits as formerly : For how many Knavish Tenants do continually decline to pay their Rents, or go off with good round Sums in their Pockets, and when their Landlords call 'em to Account, and fling 'em into the Country Gaol, the next News they hear, is of a Habeas Corpus, to Remove 'em to the King's-Bench or Fleet, and in a Fortnights time, down they come, and take another Farm next Hedge to their former Landlords. As for the City (where Trade does chiefly flourish) That Suffers infinitely more, for as Differences on Contracts and Bargains do arise, so there are more frequent Opportunities of Repairing to the Law for Satisfaction : And one would think that an honest Debt for Goods Sold and Deliver'd, should be Paid, but unless a Man will be a Law to himself, (which we can hardly hope for in this degenerate Age) there is no Money to be had ; the Creditor may Arrest him, and have Judgment against him, and Charge him in Execution ; and what then ? Why then he comes Abroad, and there's an end of the matter.

—————pudet hæc opprobia nobis
Et dici potuisse, & non potuisse refelli.

I ever thought that Trade had been the Darling of the English Nation, and shall we tamely see such Rapes and Violences Committed on her, who ought certainly to be Cherished and Improved with all the Tenderneß and Care imaginable? 'Twas the Policy of our Ancestors to respect her as the Guardian-Angel of their Island; and shall the present Fathers of our Countrey now look on with Unconcern? Can they behold these Horrid Violations, and not at all be mov'd! Certainly they can't Imagine but that such Wretched Treatment must mightily Discourage Trade: It can't but strike a Damp upon the Careful Merchant, and the Industrious Tradesman, when they Consider, That after all their Pains and Sedulous Application, the Labours of some Years may all be lost in fewer Moments: For they are forc'd to seek Returns by Sale of their Commodities with reasonable Profit, and for this, Credit must necessarily be given: Now if they happen to Trust a Knave, (as, modestly speaking, 'tis two to one but they do) their Primè Cost is also gone and sunk, for 'tis plain there's no Remedy to Recover it; what is this but a Stab into the very Heart of Trade? I'm told it was a regard to Trade which was one of the principal Motives, that induc'd the Parliament to Suppress the late pretended Priviledg'd Places, where the Law was Cramp'd in the Execution,

Execution, and consequently Trade receiv'd a vast prejudice : But 'tis in vain to destroy some Nufances, if they leave others still remaining, which are worse, and more Dangerous : As the Wounds of Friends strike Deeper, and are more Fatal than those of Open Enemies : And as Extortions by Colour of Offices and Justice are greater Offences than downright Exactions ; for that they pretend Law (the greatest Blessing of the Subject) for the Countenance of Villany and Wrong.

But I hope the Parliament will take this particular also into Consideration, That the White-Fryars and Mint are not Crushed, so long as the Prisons of the King's-Bench and Fleet are in Being ; for 'tis now become a Common Practice for Bankrupts and Cheating Knaves themselves to run into one, as they did into the other for Shelter and Protection.

I am,

S I R,

Your Humble Servant,

J. B.

An ARGUMENT, shewing, That 'tis Impossible for the Nation to be Rid of the Grievances Occasion'd by the Marshal of the King's-Bench, and Warden of the Fleet, without an Utter Extirpation of their present Offices. With Proposals for a New Constitution of those Offices, &c.

S I R,

SINCE I am inform'd that the Grand Inquest of the Nation hath Resolved (once more) to take the Abuses of the *King's-Bench* Prison, and *Fleet*, into Consideration, I thought it my Duty, as an *English* Man, who by Birthright am Intitul'd to all the Benefits of the Noblest Constitution in the World, to offer my Sentiments, in Order to have these Grievances Redress'd, which have so long Eclips'd the Glory of it, by depriving us of the Fruit and Execution of the Law; which Consequently must Languish and Expire, since it is Wounded in the Vital Part, for *Executio Legis est Anima Legis*. And without the Soul, the Letter of it is but a Dead Carcass, which can't preserve, nor be preserved from Ruin; so that a Failure of Justice it self must necessarily follow, than which, there can't be a greater Scandal and Reproach to Government: I shall Entertain you no longer upon a Subject which is so Obvious to Common View:

View ; neither shall I recite to you the particular Villanies and Oppressions of the *Marshal* and *Warden*, for to Rake into Dunghills and their Prisons are the same thing, nought but Stench and Noisomeness can thence arise ; besides we ought to take those Matters for granted, since the late Act of Parliament does expressly set forth in the Preamble :

“ That by reason of the many grievous Extortions, and
 “ ill Practices of such Persons, who have for several Years
 “ last past respectively Executed the Offices of *Marshal* of
 “ the *King's-Bench*, and *Warden* of the *Fleet*, both *Credi-*
 “ *tors* and *Debtors* have been notoriously Abused, and
 “ the good Intents of the Law wholly Eluded.

And, Sir, I am sorry to say such a Fatality attends those Prisons, that even the good Intent of that Statute seems also to be wholly Eluded, as well as that of the Common Law : The Complaints of this Sessions do abundantly testify the Truth of this Assertion, for tho' in pursuance of that Statute some Persons have Recovered Judgments in Actions of Escapes, against those Officers, yet here also they are come to their Journeys end, and after all their Tedious and Expensive Travel, find nought but Labour for their Pains : So that all those excellent Provisions against those Grievances are rendred Useless and Insignificant, and all the mighty Advantages which that Act was thought to Produce prove Imperfect and Abortive, and our great Expectations are Dwindl'd into Air.

Thus I have given you a short State of this Malignant Distemper, which has so long raged in the Bowels of the Body Politick, a Distemper not in its Infancy, it has been growing on us for some Ages past, and is arrived now to its full Strength and Vigour, it seems to be Radicated in the Blood, and dares Maintain its Post *Bravado* like, and bids Defiance to the feeble Acts of vulgar Physick ; so that
 the

the Common Law having been baffled by this Potent Enemy, the *Legislature* must be call'd upon for Aid. And nothing under Heaven but the Power and Wisdom of an *English* Parliament can stop the Progress of so Inveterate a Canker to the Common Wealth : And I submit it to their Consideration whether they must not now pursue the same Methods in this mighty Cure, as some Physicians use in Chronical Diseases, where all the Nervous Juices, and the whole Mass of Nature are Corrupted (*Viz.*) a Thorough Flux, that the whole Malignancy may be rooted up, and a new Stream of Blood run in fresh and untainted Channels. And therefore unless there be an Intirely New Constitution in these Offices, unless their Old Bottom and Foundation be not only Shaken, but totally Destroyed ; I am of Opinion that all other Remedies will be but patching, we may be Eased a while from Pain, but the rank Poison still remains, and will soon get Head again in spite of all those Temporary Applications.

Now, Sir, to come to the main Point, in Order for a Redress, I take the First Step towards it, to be an Enquiry into the Cause of this Mischiefe, and for this we must Trace the Original Fountain, from whence these Offices proceed : And I take it that in their Primitive State they were derived from the King, who being Intrusted with the whole Executive part of the Law, thought fit to Grant those Offices by Letters Patents, either for Life, as *Henry* the Fourth did to *William Finborough*, 2 *Rol. Abr.* 152. Or in Fee-Tail, as *Henry* the Sixth did to the Duke of *Norfolk*, 39 *Hen. VI.* 34. Or sometimes for a Term of Years, as King *James* the First did to Sir *James Elphinstone*, tho' this was adjudged a void Grant, 9 *Rep.* 96. And last of all, these Offices were Granted in Fee-Simple : And the First Grant of this Nature of the Marshal's Office that I have met with, was by King *Charles* the First, to Sir *John Lenthall*,

shall, under whose Title the present Proprietors Claim. What I Observe from these Grants is this, That those who first advis'd the Kings of *England* to Grant such Estates in those Offices to Private Persons, might be good Courtiers, but I am sure they were but indifferent Patriots, they Consulted their Princes Profit, and perhaps rais'd a good Sum for the present, but they forgot their Countrey's Interest, and had no regard to Posterity, for by Granting such long and absolute Estates, great Inconveniencies to the Publick have Ensued.

As First, That such Estates being Inheritances, the Owner may make 'em Subect to Judgments, Mortgages, and other Incumbrances ; from which Two Mischiefs do arise : One, That this Office may be under continual Distraction, always tearing to Pieces by the several Creditors, by which the safe Custody of the Prisoners must be neglected : And the Other, That no Creditor knows against whom to bring his Action for an Escape, for that those Incumbrances are made in Secret, and always Shifting from one to another, industriously to Cheat the Plaintiff, so that the Profits of the Office cannot possibly be reach'd ; and 'tis no answer to say, there is a *Marshal* and *Warden* constantly Sworn, whose Bodies are liable to the Plaintiffs Action ; for the Body when in Prison is no Satisfaction, but only a Pledge for the Debt till it be Satisfied : Besides the Bodies also of the *Marshal* and *Warden* are Priviledg'd from being taken in Execution ; and so it was Resolved in *Sid. Rep.* 68.

And I would put this Case, Suppose the *Warden* of the *Fleet*, who hath his Office in Fee, Dies, his Son and Heir being at that time Imprison'd there, and the Office descends to him, being in Prison, now the Law Judges him to be immediately at Large, tho' he has Fetters on his Feet, because he cannot keep himself in Prison. There's
another

another Case in *Plowden*, fol. 37. And that is, Where a Woman is *Warden* of the *Fleet* by Descent or Purchase, and one in Prison Marries the *Feme*, who is *Warden*, the Law Adjudges him out of Prison, for he cannot be in Ward to his Wife, (tho' perhaps some others are) so that here is also a Lawful Escape, tho' it seems a little Odd that Right and Wrong should be the same thing, and joined together : Yet 'tis so here, for an Escape is certainly Tortious and Unjust, and yet for an Inheritance to Descend, and for a Woman to Marry is surely rightful and just : Then for the Declaration in this Action of Escape against either of 'em, it must be a Special one indeed, for the Plaintiff Declares ; That the Son or the Husband, being in Custody, did so negligently keep himself that he did permit himself to go at large against the Plaintiffs consent, &c. Ay, and against his own Consent to, for the Law would have it so, whether he would or no : The Son was only Passive, and suffered the Inheritance to Descend upon him ; and 'tis hard a Man should be punished for having an Estate. The Husband indeed was Active and push'd forward to Matrimony, but 'tis as hard that he should be punished for a Righteous and Holy Act.

I have dwelt the longer upon these Cases, for that I conceive they give a lively Instance of the Difficulties which the Grants of those Offices in Fee, have brought upon the Common Law, which are no less than the Subversion of Fundamentals, for the very Definition of the Law it self is destroyed ; *Lex est Sanctio sancta jubens honesta & prohibens contraria*, by these Examples the Law forbids honest things, and commands unjust and absurd things ; that is, not to Marry, nor to have an Estate of Inheritance Descend upon the Heir, what is this but *Jargon* and Contradiction to the last Degree ?

These, and many other Defects were Incorporated with the first Institution of these Offices, upon the Foundation of Inheritance, but as in other Cases, so in this, *Ex uno dato absurdo mille sequuntur* ; and certainly a thousand Tricks, Frauds, Shams and Rogueries, with a long Train of Oppressions, Extortions, Rapines, and unheard of Cruelties have been Occasion'd by that Fatal Grant, Witness so many hundred Families of *English* Freeborn Subjects, both of Creditors and Debtors, who by these Merciless Harpies have been Compelled, much against their Wills, to Agree in the same Funeral Pile of Common Ruine ; so that if there can be any Motives from the Topicks of Honour, Justice and Compassion, sufficient to Engage the Fathers of our Countrey for an Effectual Redress of all these Wrongs, certainly they are to be found here, or no where in the World : I am very sensible that the Parliament hath already Interposed, as appears by the Act made in the Eighth and Ninth of His present Majesty. But my Complaint is, That the Incomparable and Excellent Design of that Act is altogether frustrated, the Remedy is not advanced, nor the Mischief at Common Law suppressed : And therefore 'tis, that I pray a *Melius Inquirendum*, That our Great and Wise Legislators, would Indulge us with a Bill of Review, in Order to Re-examine the whole Matter, and to make a strict Enquiry into the Grounds and Causes upon which so Noble a Design Miscarried : And this leads me to the Consideration of the late Act of Parliament.

First, It is Enacted, " That all Prisoners, who are, or
 " shall be Committed to the Custody of the *Marshal* of the
 " *King's-Bench* Prison, or *Warden* of the *Fleet*, shall be
 " actually Detained in the said Prisons of the *King's-Bench*
 " and *Fleet*, or the respective Rules of the same. And if
 " the said *Marshal* or *Warden* shall permit and suffer any
 " Prisoner,

“ Prisoner, Committed to their Custody, either on *Mefne*
 “ *Procefs*, or Execution, to Go, or be at Large, out of the
 “ Rules of their respective Prisons (except by Virtue of
 “ *Habeas Corpus*, or Rule of Court, which Rule shall not
 “ be Granted but by Motion made, or Petition read in
 “ Open Court) every such going, or being out of the said
 “ Rules shall be Adjudged and Deemed to be an Escape.

I am at a loss what is meant by these *Rules* ; neither
 can I find one of the Old Law Books, that will furnish me
 with an Exposition of that Word, in reference to Prisons :
 Indeed the Rule of Law is the Measure and Standard of
 it, which is grounded upon the most solid and refined
 Reason imaginable, a Reason acquired by long Study,
 Observation and Experience : But the other sort of Rules
 are the *Reverse* and *Antipodes* of the Rule of Law ; the
 one is an Opposite and flat Contradiction to the other :
 There is so vast and wide a Difference between them, that
 they are no more to be Reconciled than the North and
 Southern Poles, for the Rules of these Prisons do plainly
 Trample upon all the Rules in Law.

Sir, I will only give you a few Instances, for I labour
 to be short, and am afraid to exceed the bounds of an E-
 pistle : I shall first quote to you the Case of Sir *George*
Reynell in my Lord *Coke* 9 *Rep.* 97. where 'tis Resolved by
 the Judges, that this very Office of the *Marshal* of the
King's-Bench Prison, was an Office of great Trust, annex-
 ed to the Person, and concerns the Administration of Ju-
 stice, and the Life of the Law, which are to keep those
 who are in Execution, *in salva & arcta Custodia*, to
 the end that they may the sooner pay their Debts, &c.
 And in the same Book, *fol.* 87. it is said, That every
 Keeper ought to Secure his Prisoner *in salva & arcta Cu-*
stodia, so that such Prisoner by the Common Law, shall
 avoid a Descent, Cast, or Fine Levied, during his Impri-
 sonment,

sonment, because the Law presumes in respect of his strict Ward, he cannot have Conusance of the Disseisin, or Fine to Command an Entry, or Claim to be made; and so are the Old Books, *Bracton* l. 6. 3. f. 436. *Britton* 116. and *Fleta* l. 6. c. 52, 53. Now let us consider the Nature of the Rules of those Prisons, and make our Application: Those Rules then do contain such a particular Space of Ground Adjacent to the Prisons, as the *Rules* of the *King's-Bench* do Comprehend; The *Park*, *St. George's-street*, and some other Places: And the *Rules* of the *Fleet*, *Ludgate-hill*, the *Old-Baily*, &c. In any of these Places, 'tis Lawful for the Prisoners (if they may be call'd so) of either of those Prisons to Reside: And in Fact abundance of 'em are, to the great Expence and Vexation of themselves and Creditors, Lodg'd up and down within these *Rules*: First, to their own Expence, for that they not only pay Rent for their Lodgings with their Landlord, but they must also give Extravagant, and Excessive Rates for a Chamber, which they are supposed to have within the Prison. Indeed the late Act has reduced the Old Exorbitant Rates to Two Shillings and Six Pence *per Week*, and that not to be Paid neither, unless they are in actual Possession of such Chamber, within the Prison; and if the *Marshal*, or *Warden*, demands any greater Rent, he Forfeits Twenty Pound: One would have thought, that these Words being so plain and express, this Mischief had been Redress'd, but 'tis still the same, the Name is only chang'd, for the poor Prisoner must pay according to the Ancient Rate, only now, no Rent is demanded, but all is Shelter'd under the Notion of Civility-Money, and if he does not Discharge this Acknowledgment, the *Mirmidons* will quickly Dragg him into the real Prison, and teach him better Manners. This Contrivance puts me in mind of the Old *Romish* Priests, upon whom my Lord Coke has this

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Observation, That for some Ages together, they still found some Evasions to Creep out of the Statutes of *Mortmain*: But *Henry* the Eighth took a true Method to Obviate this, and other Mischiefs, which those Locusts in the Common Wealth had introduced, by pulling 'em up, both Root and Branch. Then as to their Creditors, it can't but be a mighty Vexation to them, to think that after all their Trouble and Costs at Law, to Charge their Debtors in Execution, by which they propos'd only the Confinement of their Bodies; that yet notwithstanding all their Endeavours, they should in spite of 'em have their Liberty, it can't but Teaz an honest Tradesman to his Soul to see his Debtor, under Condemnation, Strut it with his Sword, and Nose him at his very Door: That this is Fact no Body can deny; for 'tis the Daily Practice of all those pretended Prisoners in the *Rules*, to walk where they please in all the several Parts of the Town, and to be sure they'll Cross the Street on purpose to put their Creditors on the Fret, and Brave it to their Faces: Besides some Creditors on *Ludgate-hill* are so unfortunate, as to have their Debtors come and Live next Door to them; perhaps the Creditor and Debtor may Lodge in the same House, and this is worse than only losing the Debt, for he's Laught at to boot: Can this Creditor think any thing, but that the Law is a Jest? He can't think it in Earnest sure, when it calls his Debtor's Lodging there an Imprisonment, and his Debtor a Prisoner; for by the same Parity of Reason the Creditors Lodging is also a Prison, and the Creditor himself is become a Prisoner: He may well cry out, this is a Dream, or else we live in an Age of Miracles and Contradictions.

But, Sir, that which I insist on is, That not only the Going of these Sham-Prisoners out of those Places they call the *Rules*, but also their Living within 'em, out of the Prison,

Prison, is an Escape in Law, But I must not be understood to mean, that their being out of the Prisons of the *King's-Bench* and *Fleet* only is an Escape, if they are in any other Prison it is well enough. I know it was Adjudged in *Cro. Car.* 210. that the *King's-Bench* Prison was not Local, but any Place where a Man is Restrained of his Liberty is a Prison, and in the same Book, fol. 266. It is Resolved, by all the Judges of *England*, That the *Warden* of the *Fleet*, and the *Marshal* of the *King's-Bench*, may keep their Prisoners in any other Place of the County: But then they ought to be kept as Prisoners, *Sub salva & arcta Custodia*: Whereas in our Case, 'tis not pretended that they are in Custody within these *Rules*, nor that there is any manner of Keeper with 'em, they have the same Freedom and Liberty of *Egress* and *Regress* with other Persons, to Go, and Come when they please, without any manner of *Guard du Corps* attending of 'em; perhaps some of the more Cautious, when they are to go Abroad amongst their Creditors, will now and then take a Follower with 'em; but however in point of Law, this won't do neither, for 'tis Adjudged in *Boyton's Case*, the 3 *Rep.* 44. and so is my Lord *Dyer* 278. and *Hub.* 202. That if the Sheriff suffer the Prisoner to go abroad with a Bayliff or Keeper, yet this is an Escape, for that he ought to be kept in *Safe and Strait Custody*, which can't be said when his Arms and Legs are at Liberty, with his Sword by his Side, and only one Scoundrel to Attend him.

There are Multitudes of Authorities, which shew the Strictness and Severity of the Law, as to the Confinement of the Prisoner's Body: And the Political Reason of this Rigorous Usage is, That the Prisoner, being uneasie under it, might the sooner be induced to regain his Liberty, by Discharging his Just and Honest Debts. So that since the *Rules* of these Prisons do directly Subvert the Good and

Ancient

Ancient Maxims of the Common Law, it will certainly be worth the Enquiry of the Committee, to know when, and by what Authority these *Rules* were first set on Foot ; and whether the present Use of 'em does Answer to their Original Institution, I Confess I have Endeavoured to Trace 'em to the Fountain, from whence they first Sprung ; but the first and only Book where I find the *Rules* taken Notice of, is in *Sid. Rep.* 384. where 'tis said by my Lord Chief Justice *Keeling*, That by reason of the Removal from other Prisons, there being more Prisoners than the *Kings-Bench* Prison could contain, therefore the Prison was Enlarged, by the Direction of the Court, which Enlargement is call'd the *Rules*, which are Houses Adjacent, Hired by the *Marshal*.

So that here the Authority appears, by which they were introduced, (*viz.*) by the Direction of the Court, and I don't see any harm in this Direction, if it was only to Enlarge his Prison-House, or to keep the Prisoners in another House, and Place, provided they are kept in Safe Custody. But what if these *Rules* of late Years are Degenerated, and are quite of another Nature, from those which were at first Allowed ? For now the *Rules* are not Hired Houses by the *Marshal*, nor any part of a Prison, they scorn the Scandal of that opprobrious Name, the Gentlemen only take Lodgings for their Conveniency, within certain Places called the *Rules*. And what if these *Rules*, as they are Established upon this new Bottom, should also be Approv'd of by the Rule and Direction of the Court ? Why truly, if the Case should be so, I take it clearly, That this Rule, and Direction of the Court, is against the Law of *England*. This may seem a little roundly Exprest, and perhaps may look somewhat Peremptory to those who don't Consider, That the Judges are but Men, & *Humanum est Errare*, says my Lord *Coke*, the great Oracle of our Law,

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who himself could not escape being Censured, especially in the Zenith of his Court Preferments : So the Lord Chief Justice *Keeling* was mistaken in Point of Law, when he Fin'd, and Committed some of the Jury to Prison, for not giving a Verdict to his Mind, which Error he acknowledg'd upon his Knees at the Bar of the House of Commons : So it appears, in 1 *Sid.* 218. that the whole Court of *King's-Bench*, mistook the Law, when by their Rule they Impos'd a Watch and Ward in *Westminster*, and laid a Tax upon the Inhabitants, to defray the Expence of it ; This was indeed a pretty bold Stroke, or certainly a Prodigious Mist clouded their Understandings, for every vulgar Eye might at first Glance discover the Weakness of that Rule, which was made in direct Opposition, of the great Priviledge of Parliament, and I wonder they escaped the severest Censure of it : But my Lord Chief Justice *Scroggs* had not so good luck, for one of the Articles of Impeachment against him was, for that he had caus'd an Illegal and Arbitrary Rule, to be Entred in the Court of *King's-Bench*, against the Printing of the *Weekly Packet of Advice from Rome* ; 'twas his Misfortune, but the Nation's Happiness, that he liv'd at a time, when the Parliament would not suffer the meanest *Englishman* to be Oppress'd with Impunity : It was that Immortal and Prophetick Parliament, commonly called the *Exclusion Parliament*. And since I chance to mention that Generous and Heroick Senate, I can't forbear making this short Observation : It was, *Cassandra*-like, theirs, and the whole Nation's unspeakable Calamity, not to be believed ; for which Stubborn, and vastly Pernicious, and only not Fatal Blindness of the Church, (for there it went) What a Chain of Horrors, Darknes, and Confusions did Ensue ? What a Scene of Tragical Tyrannies and Depredations, were every where Display'd throughout the *British* Isle ? Our Civil Rights were

were Lost, and intirely Swallowed up by that Voracious Monster, called, *Prerogative of the Crown*, and our Religious ones, were reduced to the very Brink and Precipice of Destruction: But when the Church looked down and saw the great Abyss in which they were Eternally to sink; then they Cry'd out for help, and Providence brought 'em an Assistance, which hath ('tis true) Redeem'd us, but not without the Expence of Millions of Sacrifices Offered up, not of Beasts, as those of the Ancients were, but of the Noblest Human Blood and Treasure.

But after this small Digression to pursue the Thread of my Discourse, I was giving you some Instances, where the Courts in *Westminster-Hall* have given Signal Proofs of their Fallibility: And what I infer from hence is; That the Rules of Court ought not to be taken upon Trust, nor as if they were undoubtedly Legal, because they are Rules of Court: And therefore if any such have been made, in respect of the *Rules* of the *Fleet*, and *King's-Bench* Prisons, it may be reasonable for a Parliament to Enquire into the Justice and Validity of them. And this brings me to Consider that other part of the Enacting Clause, where 'tis said,

“That no Prisoner shall be suffered to go at large, except by Virtue of some *Habeas Corpus*, or Rule of Court; which Rule of Court shall not be Granted but by Motion made, or Petition read in Open Court, &c.

So that if there be a Rule of Court for it, a Prisoner now may lawfully go abroad: This is, I Confess, an Extraordinary Clause, and looks as if a Judge himself, or at least some Body who was pretty sure of being one, had Penn'd it, for it gives the Court an Arbitrary, or which *Tantamounts*, a Discretionary Power, to Release all the Prisoners in *England*. I don't say, or believe, that they will ever Exert it to such a height: But why should the Court have a Power to do it if they please? Why should the

Debtors Restraint any more than the Creditors Liberty be Precarious ? Since the same Laws are the Measures of both, and a Violation of the one may soon be followed by a Violation of the other ; for they who have an Absolute Power to give Liberty, may in time pretend to that of Restraint. 'Tis true, we are Secure from all Apprehensions of this Nature, during the present Government, who may doubtless Challenge all the Reigns since the Conquest, to produce a more August and Reverend Bench for Learning, Temper and Integrity : So that it seems the peculiar Happiness of His Majesties mighty Genius, to be Blessed with Council at Home, equal to the Success of his Arms Abroad, that he might Triumph both in Peace and War.

But 'tis Posterity that I am labouring for : What if in process of time a Deluge of Oppression, and Tyranny, should again Overwhelm us ? What if such a Set of precious Judges should be trumpt up as the late Reign produced ? Some of which were the Scum and Refuse of the Law, a Disgrace and Scandal to the Robes they Wore, and all (but one) were base Deserters of their Countrey's Cause, and were cull'd out for no other End, but to put the great Machine of Arbitrary Power into Motion, which they did effectually Perform, by prostituting the Laws, Religion, Honour, and Justice of the *English* Nation, to the Vile Lust of a Superstitious and Despotick Monarch.

But as I was Observing, how Dangerous would it be to Intrust such a Power in the Hands of *Renegado* and *Apostate* Judges, who might Raise Vast and Immense Sums, by Granting such Rules of Enlargement ? If the late Lord Chief Justice Sir *Robert W.* had been Invested by Act of Parliament with such a Discretionary Power, he might in his great Wisdom have thought it an Easier, and more Honourable Way of Supplying his Necessities, than by Mortgaging his Estate a Second time, and adding Perju-
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ry to the Bargain, by making an Affidavit, that 'twas free from all Incumbrances ; besides, he might have thought this Power a Perquisite to his Place ; and that he might Justifie this Method of making up the Loss of his Sallary, the greatest part of which went on t'other side of the Hall.

I know it may be Objected, That never such a General Rule of Enlargement was made, nor perhaps ever thought on before, or since the making of the Act (tho' I shall quote one by and by, which was made long before that Act, and comes pretty near it) and that this Rule of Court, which is Excepted in the Act, is commonly understood of Day-Rules, and that only such are Granted : Tho' I should acknowledge this to be true, yet it admits of an easie Answer ; for I am only Arguing that the Court May Grant a General Rule of Enlargement, by Virtue of this Act, and so they May Grant other Rules by Virtue of it : As for Instance, I don't see but the Court may now Grant a Rule to bring up a Prisoner to be a Witness at a Tryal at Bar, or to carry him to York, to be a Witness at a Tryal there, or upon any other Occasion the Court shall think proper : Whereas before the late Act, I do not think such a Rule was sufficient, to Secure the Keeper from an Action of Escape. There is an Authority to this purpose in 1 Sid. 13. That if a *Habeas Corpus ad testificandum* be directed to a Gaoler, to bring up a Prisoner, who is in Execution, to be a Witness : If the Goaler by Virtue of this Writ brings the Prisoner, yet this is an Escape, for which he is Answerable, and why should a Rule of Court have a greater prevalence, and force, than the King's Writ, which has been Established by the Common Law, time Immemorial.

But pray let us Consider a little the Nature of these Day-Rules, and how far they will stand the Test of a Legal Examination. This Rule, it seems, is made every Day in Term, upon

upon Motion, or Petition, in which it is Suggested by the Prisoners, that they have Extraordinary Occasions to go Abroad, to Direct their Attorneys, and Advise with Counsel about their Business, and the like: Upon this the Court makes a Rule for them accordingly, but 'tis suppos'd they are to have a Keeper with 'em, tho' if they have, that will not alter the Case. But the question is, Whether the Common Law does Allow, that a Prisoner in Execution may be permitted in any Case to go, and Advise with his Counsel, tho' it may be about Matters which relate to the Cause of his Imprisonment? And I conceive that the Common Law does not Indulge any such Liberty: And for this, I rely on Two Substantial Authorities; The First is in *Plowden's Commentaries* 360. where 'tis said, that a Man in Prison, hath not liberty to go at Large, to make his Entry or Claim, or to seek Counsel. The Other is in *Co. Lit.* 259. where 'tis also said, That a Man Imprison'd shall not be bound by a Descent, for that by the Intendment of Law, he is kept without Intelligence of things Abroad, and hath not Liberty to make his Entry or Claim, or to seek for Counsel. I'll quote one Case more, and that is *Moston's* Case, in my Lord *Dyer* 297. which was this, *Moston* being in Execution in the *Fleet*, the Lord Treasurer, and the Barons of the *Exchequer*, Commands, by their Order, or Rule of Court, that the *Warden* should let the Prisoner go at Large, accordingly the Prisoner was let loose; but the *Warden* in those times paid for't in an Action of Escape, brought against him in the *Common Pleas*, where his Justification under the Rule of Court was not Allow'd. So that here's a President of a General Rule of Enlargement; and what has been done, may be done, especially when the Statute hath by so strong an Implication, given the Court Power and Authority, to make such another Rule, if they think fit.

I shall Conclude this Head, with an Observation, how much this Modern Practice of letting Prisoners go at Large by Day-Rules, differs from the Ancient Usage, for in the *Year-Book* of the 39 *Hen. VI.* 33. is this remarkable Passage, " That the Court of *King's-Bench*, used every Term, " Once, or Twice, to send the Coroner to the *Marshal's* " Prison, to see all the Prisoners, and if any of them were " wanting, he Mark'd their Names in a Book, and Inform'd " the Judges of it, and upon this, the Court would ask " the *Marshal* what was become of his Prisoners, and if he " could not shew a sufficient Cause, to Excuse himself, the " Court did Record the Escapes of every one of 'em upon him. A very laudable Custom, and if it were Revived at this Day, we need not be asham'd of the Old Fashion.

But this would Redound too much to the *Marshal's* disadvantage, who, by these Day-Rules alone, may easily get Two Hundred Guinea's a Term, for tho' the Prisoners have a Rule, (which the *Marshal* himself is very Solicitous to procure for 'em) yet there is no Stirring without coming to some Agreement with him ; and suppose the Bargain to be struck up for a Hundred Prisoners, at Two Guinea's a Head, it comes to that Sum, and all that he pays out of these Vast Perquisites, is only a few New-Years-Gifts, and such like Trifles ; perhaps the Clerk of the *Rules* may also have a small Acknowledgment for his great Favours.

Sir, by this time I hope you are satisfied, That the Commencement of this Act, hath but an indifferent Aspect, and for this reason I do not expect any great Benefit from the other parts of it ; for we have this Maxim in the Law, *Quæ malo inchoata sunt Principio, vix bono peraguntur fine* ; and I doubt this will Apppear too Obvious, when we come to consider the Conclusion of this Act. But by the way, I cannot but take Notice of that Clause, by which all Conveyances,

veyances, and all Trusts, and Declarations of Trusts, &c. any way relating to the Offices of *Marshal* or *Warden*, are to be Inrolled : The Mischief at Common Law was, that there were so many Secret Trusts of those Offices, such frequent Shiftings, and Transferrings of the Mortgages, and other Securities, to which the Profits were Subject, that 'twas Morally Impossible, for the Plaintiff to know, against whom to bring his Action, or to have any Remedy : And there were always Private Articles between the Superiour *Marshal* or *Warden*, or the Person who had their Interest, and the Temporary *Marshal* or *Warden*, who did actually Officiate ; by which the Rents, and Profits, were totally Reserved to the Superiours, and the others, were Obligated upon all Occasions to follow their Directions, and to give up and Surrender at Command : So that these Underlings have all along been only Servants, and meer Tools, nothing but Statues set up to receive the Shot of the Creditors, and to Skreen their Masters from any harm ; and when one is Pierced thro' and thro', down he Tumbles, and another such Logg is Advanced in his Room.

But besides there is this to be Considered, That tho' the Plaintiff does know who is the Superiour *Warden* or *Marshal*, or to whom the Profits of these Offices are Subject, or Conveyed in Mortgage, or in Trust, &c. yet whether this Knowledge would now better his Case, in respect of any Action to be brought, or of his having any other Remedy ?

'Tis true, the Stat. of *Westm. 2 Car. 11.* is express, That where the Inferior Officer is not sufficient, his Superiour shall Answer for the Escape of the Prisoner ; and that was the Duke of *Norfolk's* Case, 39 *H. 6.* 34. But against whom shall this Action be brought ? If against the Superiour, you'll have the same Effect, as if it were against the Inferiour ; for the Proverb is here Inverted, it being *Like Man like*

like Master ; you can have nothing but Bones (if you can have that) from either of 'em, *Briggs* and *Lentball* are of the same Leanness, tho' one seems Plumper in the Face than t'other ; for the Reversion of these Offices is not so Clear and Free, as it was in the good Days of *Henry* the Sixth : It has been long since Loaded and Incumbred with Mighty Burdens, it is ready to Sink and Expire beneath the Weight of 'em.

So that the Superiour's Interest being so far involv'd in Mortgages and other Incumbrances, let us see whether you have any Remedy against the Persons who Claim under those Titles, and I conceive there is none ; for in your Action of Debt against any of them, you must Declare according to the Statute, That since the *Custos Gaolæ non habeat unde solvat respondeat superior suis qui Custodiam hujusmodi Gaolæ sibi Commisit*, &c. But the Mortgagee, or Trustee, is not the Superiour *Marshal* or *Warden*, neither did they know who Committed the Custody of the Goal, for they concern themselves only for the Profits, and not about him who actually Officiates : Besides this would be Confounding Jurisdictions, and Mixing the Courts of Common Law and Equity together, for Mortgages and Trusts are the proper Objects of a Court of Conscience : And indeed, as I conceive, Estates in Trust were not Subject to any Judgment, Statute, or Recognizance at Common Law, until the Statute of *Frauds and Perjuries*, by which it is Enacted :

“ That the Sheriff may make and deliver Execution of
 “ all such Lands, Tenements, and Hereditaments, as any
 “ other Person or Persons be in any manner of wise Seized
 “ or Possessed, in Trust for him against whom Execution
 “ is Sued, as the Sheriff might have done, in Case the Party
 “ himself had been actually Seized, &c.

So that since this Statute, if any Person had been Seized of the Reversion of these Offices, in Trust for the Superiour *Marshal* or *Warden*, no doubt but it would have been liable to Execution, as well in the Hands of one as t'other : But this is not our Case, for the Trustees here are Seized in Trust for the Mortgagees, or other Persons who Claim under the several Incumbrances, with which these Offices are Charged, by the Superiour *Marshal* or *Warden*. So that tho' these Titles are Inroll'd, yet they afford the Creditor but a Melancholly Prospect, since they are wholly Exempted from, and in point of time Prior to his Action, and consequently must Command Precedency.

And for the same reason, the mighty hopes of speedy Justice, which People had Conceiv'd of the *Sequestration Clause*, are also Vanished : The words of it are as follows :

“ The Judges shall, after Oath made that the Judgment
 “ was obtain'd without Fraud, upon Motion, Seque-
 “ ster the Fees and Profits of the Office of *Marshal* and
 “ *Warden*, and in the first place apply the same towards
 “ Satisfaction of the Debt or Debts, due from the Prisoner
 “ who Escaped.

This indeed, as well as the last Clause I mention'd, would have been of excellent use *in Diebus illis*, when the Sky was Serene and Clear, and no Clouds Overshadow'd any part of the Office : But now since the whole is cover'd with Mists, and Obscure Intreagues, the Scene is quite Alter'd, the Judges are at a loss where to find the Profits, or if they are found out by the Inrollment, yet they must be Excused, for they are Pre-ingaged, and all Pre-ingagements must in Justice, as well as Honour, be Allow'd of : And therefore tho' the former part of the Statute does positively Affirm, That the Fees and Profits shall,

shall, in the first place, be Applied towards Satisfaction of the Prisoner's Debts ; yet the latter part does as positively Deny it : For that Saves all the Rights, Titles, Interests, and Securities of *Johnson, Boulter, Norwood, &c.* which they have in the said Offices, or the Profits thereof.

And now *Their* Demands must be first Satisfied, so that this Unfortunate Act of Parliament Commits a Violence on its self, seems to be a *Felo de se*, and by a Fatal Contradiction, gives its own Heart a Mortal Wound. And after all, Suppose the Judges should Sequester the poor Remnant of the Profits (if any such there be, when all the Pre-ingagements are Discharg'd) I would then ask this single Question, by whom shall the *Marshal* or *Warden*, who does Officiate, be paid his Sallary ? (for the poor Creature must have a Livelihood) I doubt the Court will want their Officer, unless they can suppose that one Skeleton may live upon another ; for by this time both the Office and Officer must be reduc'd to a mighty thin Contexture. I have now done with this Famous Act of Parliament, of which we were so big with Expectation, and I'm sorry it should be said at last, *Parturiunt Montes*.

Having thus made the Way Clear, and I hope given you Convincing Proofs, Drawn from the Sacred Repositories of our Law, that the present Foundation, as well as Management of these Offices, is Diametrically Opposite to the reason of the Common Law, and wholly Inconsistent with the Noble Frame of the *English* Happy Constitution ; I come now to Offer my Humble PROPOSALS to the *Parliament* for a New and Regular Establishment of these Offices, which in themselves I own are an Essential part of the Common Wealth.

I. That the present Officers of the *King's-Bench* and *Fleet*, the *Marshals* and *Wardens*, Superiour and Inferiour, with all the Train of Rubbish which Attends 'em, may be Dismiss'd their further Service ; and tho' these Miscreants have been such Unprofitable Servants to all Mankind but themselves, and by their Crimes have undoubtedly Incurr'd a just Forfeiture of all their several Interests, yet that even those who Purchas'd their Places for Valuable Considerations, should be Reimburs'd their Purchase-Money, tho' this is a Favour which they can't pretend a Title to ; and that which, perhaps, no other Power upon Earth, but an *English* Parliament, would Indulge.

II. That all Mortgages, and other Securities and Incumbrances whatsoever, which have been made really, and *bona fide*, upon Valuable Considerations, may be Paid Off, and Discharged, with Principal and Interest ; which otherwise would have lain an Eternal Dead Weight on the Offices : For to be sure the *Marshal* and *Warden* would have kept all Incumbrances still on Foot, on purpose to Secure the Profits thereof from being touch'd. So that until these Obstacles are Remov'd, all Endeavours for an Effectual Relief must be Vain, Fruitless, and Insignificant : And I am inform'd, That the whole Charge that will be requisite upon this Occasion, will not Amount to above Thirty or Forty Thousand Pounds ; a small Recompence for a National Benefit ; no more than some single Regiments of the Army are to have before they are Disbanded.

III. The Stage being Clear of these Vermin, like Snails let 'em carry their Houses and Prisons with 'em, for indeed they are not large enough to Contain a Tenth Part of the Prisoners ; which I take to be a strong Argument against the possibility of the present Prisons answering the
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Ends of the Law, (*viz.*) Confinement, &c. And therefore, as to the Foundation of this New Establishment, in the first place, I Propose the Builing of Two Large and Capacious Prisons, which may be contrived to Contain Three or Four Thousand Men apiece; and in each of these New Prisons a Work-House, to be set apart, which cannot but turn to a very good Account; for not only our Manufactures might be thereby Improved by so great a Number of Hands, but also abundance of Miserable Wretches, who are in a starving Condition, and forc'd to Beg thro' a Grate, would find a Comfortable Subsistence: And besides, there would be this particular Advantage to the whole Nation, That whereas now by the 43 *Eliz. c. 2.* the Justices of the Peace of every County and Corporation in *England*, are yearly to Rate every Parish towards the Relief of the Poor Prisoners of the *King's-Bench*; all this constant Charge and Expence, which has been paid already for near a Hundred Years, will be taken off, which otherwise might continue upon us, as a Rent-Charge, to the End of the World; so that the Nation will Discharge a Debt by this Means. Indeed I have often wondred that there have been no Provisions hitherto made for the Setting poor Prisoners for Debt at Work, and why they should be looked on as Useless and Rotten Members of the Common Wealth, any more than poor Prisoners Committed to Gaol for Felony, and other Misdemeanors, for whom by the 19 *Car. II. c. 4.* the Justices of the Peace at their General Sessions are to Provide a Stock of such Materials as they think convenient, and fit Persons to Oversee and Set them to Work.

Now for the Charge of these New Buildings, it may be so Managed as not to cost the Nation a Farthing; for I do not question, but there are Five Hundred Persons in this Town, who would gladly Undertake the Building of these

these Prisons, on the Terms of being Reimbursed by part of the Profits, which may Arise within the Walls, either by Chamber-Rent, or from the Prisoners Work, or other Methods, as shall be thought fit by Parliament.

IV. And in Order to Reduce the Number of the *King's-Bench* and *Fleet* Prisoners, by preventing the Removal of Prisoners from the Countrey Prisons: That no *Habeas Corpus* may be Allow'd, unless it be upon some Affidavit made of the Fact, by which it may appear to the Court, or the Judge, what the Nature of the Cause is, for which he was Committed, and if it appears to have been upon any *Mesne Process*, or Execution for Debt, Damages or Costs, &c. that either the *Habeas Corpus* may be Denied; or if the Matter be doubtful by reason of Cross Affidavits, that the Prisoners may be brought up, and after Examination, be Remanded, as is usual in Criminal Cases: And I can't see what Occasion there is of this *Habeas Corpus*, when the Prisoner may be as well Charged by a Copy of the Declaration delivered to him, or the Turn-Key in the Country Prison.

V. That the Right of these Prisons may be Vested either in the Crown, under such Limitations and Controul of Parliament, as shall be thought proper: And that every Year the Judges should present to the King, the Names of Four Good and Substantial Persons, in the same Manner as they Present the Sheriffs, out of which the King may Chuse One, to be the *Marshal* of the *King's-Bench* Prison, and another to be *Warden* of the *Fleet*. Or, since the old Right which flow'd from the Crown hath been Unfortunate, and it may be thought by some, a little Ominous, to have the New one deriv'd from the same Fountain: That then the Fee-Simple of these Offices may be Vested in the Mayor
and

and Commonalty of the City of *London*, as Superior *Marshal* and *Warden*, and that their Sheriffs may be Deputy *Marshal* and *Warden*; and may appoint the Keepers of the *King's-Bench* Prison, and *Fleet*, in the same Method as they do now the Keepers of their several Prisons within the City : So the Mayor and Citizens of *London* have the Shrievalty of *London* in Fee, and the Sheriffs of *London* are Guardians under them, and Removable from Year to Year. And in this Case the Sheriffs of *London* are Guardians of the Prisons and Gaols, and the Mayor and Citizens are their Superiors; and if the Sheriffs are not Solvent to Answer Escapes, the Mayor and Citizens are responsible for them, and this Appears in the 2 *Instit.* 382. And I take this to be the best and most excellent Model, as having so certain and undoubted a Fund, to Answer all Escapes which can possibly happen : And I am apt to believe, That the greatest part of the Citizens (who doubtless have suffered most by the Mismanagement of the present Officers) would be very willing of a New Constitution upon this Bottom, and would no more fear the Danger of Escapes, than they do at present ; one of which does hardly happen in an Age out of any of the City Prisons.

VI. Since there must necessarily be a great Expence to the *Marshal* and *Warden* within the Prisons, in Servants and other Conveniencies, and also the Danger of Answering Escapes out of 'em ; I doubt there must be a Considerable Allowance, sufficient to Encourage a Person of Worth and Substance to so great an Undertaking ; I presume it must be Two Thousand Pounds *per Annum*, at least, for each Officer : But the particular Sum, and the Methods of Raising it, must be left to the Debates of Parliament.

VII. That

X VII. That no *Marshal* or *Warden* shall hold his Place above One Year : These Offices are of such Vast Importance to the Welfare of the Publick, and the Trust Reposed in those Officers Hands, is of such Inestimable Value, it being no less than the Life of the Law it self, that I think no Man can pretend to Conduct and Integrity enough, to be Entrusted with such a Treasure for his Life : There's no one can say, but in a long Series of Years, as his External Goods are Subject to the Turns and Strokes of Fortune, so the Constancy of his Mind, may, by continual Attacks, at last be shaken : But in a Years time there may be few Temptations Offered ; and who would Embrace 'em, and draw upon himself and Family an Age of Trouble and Misfortune, for a small Gain, which cannot last above a Year ?

VIII. That if this Right be Invested in the Crown, the King shall not Nominate any Person above the Degree of a Baronet, to be *Marshal* or *Warden* ; and for the more effectual preventing of any pretences to any Priviledge of being Exempted from Actions, &c. no *Marshal* or *Warden* shall be capable of being Chosen a Member of Parliament ; Two such Trusts at the same time seem Incompatible ; at least they are too Weighty to be Managed by one and the same Person, to the general Satisfaction : Besides, as it has been lately Observed by a Judicious and Learned Author, " All Wise Governments endeavour, as much as possible, to keep the Legislative and Executive parts Asunder, that they may be a Check upon one another.

IX. That Annually at *Christmas*, (or any other time) certain Persons of known Honour and Integrity, may be Commissionated under the Great Seal of *England*, to Inspect the Management of these Offices, and to Examine into all Abuses and Irregularities of the *Marshal* and *Warden*, or
any

any of their Inferiour Officers, and to make their Report of the same at the next Sessions of Parliament (if there be none then in being :) And it may be well worth the Consideration of our Legislators, Whether a Triennial Visitation in this Nature throughout the Realm, of all Temporal Officers and Ministers, who are concern'd in the Administration of Justice, and Execution of the Laws, would not produce mighty Blessings and Advantages to the Publick, We should not then hear such Grievous Complaints against the Corrupt Judgments in Inferiour Courts, and the Abominable Extortions of their Officers : Nor should our Ears be Pierced with the Sighs and Groans of a Thousand Poor Unhappy Wretches, who Daily fall into the Clutches of the Little Petty-Fogging Solicitors, and Bayliffs.

I shall Conclude with a Recital of part of that great Lawyer and Statesman Sir *Nicholas Bacon's* Speech, which he made to both Houses of Parliament, as appears in Sir *Simon Dew's* Journal 152.

“ Now to the Execution of Laws made by you, and
 “ the rest heretofore by others, I am to remember you,
 “ That those Labours, Travel, and Pains taken about the
 “ Laws, are all in Vain, and Labour Lost, without the due
 “ Execution of them ; for a Law without Execution, is
 “ but a Body without Life ; a Cause without an Effect ;
 “ a Countenance of a thing, and indeed nothing : Besides
 “ the making of Laws without Execution, does very much
 “ harm, for that breeds and brings forth Contempt of
 “ Laws, and Law-makers, and of all Magistrates ; which
 “ is the very Foundation of all Misgovernance, of all In-
 “ juries and Injustice, and of all Disorders and Unquiet-
 “ ness in the Common-wealth.

Thus, Sir, I have Ventur'd thro' Untrodden Paths, tho' 'tis indeed matter of Astonishment to think, That not one of all our Patriotical Lawyers should have Engag'd long since, this great and terrible *Leviathan*, who thus Disturbs our Peace, and Cracks the Sinews of the Body Politick : (for 'tis a true Observation, That the Laws are the Sinews of Peace, as Moneys are of War.) For my part, all that I can hope for from this poor Attempt, is, That some Strong and Abler Pen may be Encouraged from these small Hints, to undertake the Cause : There can't be a Nobler Field to Exercise all the Faculties of the Mind, and Body ; for Wit, Judgment, Manly Strength, and Courage, must all be Summoned to our Aid, against this Great and Common Enemy to the whole People of *England* : And after all, I'm afraid he'll prove too hard for any particular Body of Men, who dares wage War against so many Millions. We must at last beg the Assistance of the Legislature, and tho' even that, at the first Onset, may give a little Way, and I doubt hath actually receiv'd a Foil : Yet I hope tis but *Anteus*-like, to rise with greater Force and Vigour, and to Correct this daring Insolence of Villany, that could pretend to Grapple with Almighty Power ; for in respect of our Inferiour Orbe, such is the Power of an *English* Parliament.

Sir, I shall Sum up all with this short Addition, by way of *Cerollary* : That 'tis Visible to the whole World what Prodigious Things our Parliaments have done, since the Happy Revolution : They have fixed Matters of Religion upon a sure, and lasting Foundation ; and, to a Miracle, Reconcil'd the Feuds and Animosities Rais'd upon that Score : They have Retrench'd the Exorbitances of the Prerogative, and Rivetted the Liberties of *England*, by the *Bill of Rights* ; which, as a Second *Magna Charta*, deserves

to be wrote with Characters of Gold : Our Properties have likewise been taken Care of, by several good Acts, and in particular, by that which Reforms the Coin : They have Carry'd on a War, and Procur'd a Peace, to the Surprise and Admiration of *Europe*. But after all these great and wonderful Performances, unless we can Enjoy the Fruits of Peace by a due Administration, and Execution of Justice, they have not finish'd Half their Work ; for the Intestine Tumults and Commotions of a Distemper'd State, are more Intollerable than a Foreign War. Therefore I am clearly of Opinion, That the Mischiefs, and Distractions, which Daily Arise from these Infernal Offices, are not less Dangerous to our Constitution, than a *Standing Army* ; and since your House is so Unanimous to Disband the One, I can't but think, that upon a serious and due Consideration, they will be as Zealous to Dissipate and Confound the other. And I hope this Parliament will have the Honour of so Great and Glorious a Reformation.

F I N I S.

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